INFO PAKS

Doing Business Internationally

ACCA
American Corporate Counsel Association
Global Corporate Counsel Association
1025 connecticut avenue nw
suite 200
washington, dc 20036
p 202.293.4103
f 202.293.4701
www.acca.com
The in-house bar association SM

"My membership has given me the opportunity to develop a network of in-house colleagues who understand and deal with the same issues I confront every day. It helps me to be a better in-house lawyer."

Robert Lindquist
Senior Director
Ingram Micro Inc.

ACCA/GCCA Can Help You Do Your Job Better

1. **In-house Focus**—ACCA/GCCA is the only bar association that addresses the professional and practice needs of in-house counsel (and only in-house counsel).

2. ***ACCA Docket*** (www.acca.com/p-docket.php)—Our award-winning monthly journal features articles written by corporate counsel on issues you face daily and provides solutions you can use now.

3. **InfoPAKS**SM (www.acca.com/resources/vl.php)—Save time and money with these information packages that include articles, sample forms and policies, and case law on conflicts and waivers, records retention, outside counsel management, technology, and much more.

4. **MemberToMember**SM (www.acca.com/MemberCentral/membertomember/about.html)—Tap into the expertise of your ACCA peers through our network of in-house volunteers who provide advice about legal issues, such as retaining local counsel, or the benchmarking of corporate forms, policies, and procedures.

5. **Virtual Library**SM (www.acca.com/resources/vl.php)—Check out this online database for sample forms and policies, articles, website references, and checklists to help you resolve current problems.

6. **NewsNET**SM (www.acca.com/newsnet)—NewsNET provides daily access to all the latest cases affecting your selected practice areas.

7. **In-house Networks**—ACCA's Chapters (www.acca.com/communities/chapter.php) and Committees (www.acca.com/communities/committee.php) offer focused CLE programs and opportunities to network with other corporate counsel.

8. **Advocacy** (www.acca.com/inhouse/index.php)—ACCA speaks out on issues affecting your ability to practice law, including attorney-client privilege and multijurisdictional practice (MJP).

9. **INHOUSE JOBLINE**SM (http://jobline.acca.com/index.php)—The one place to find your next position, post your resume, or hire legal staff.

10. **ACCA Alliance** (www.acca.com/resources/alliance.php)—ACCA partners with leading legal vendors to provide products and services designed to help you better manage your time, workload, and budget.

11. **Annual Meeting** (www.acca.com/education2k2/am/)—Stay sharp! For the best information on corporate practice issues attend ACCA's Annual Meeting. With more than 80 sessions to choose from, you'll receive focused, insightful information to help you counsel your corporate client better.

To join ACCA, contact our member services department at 202.293.4103, ext. 360, or sign up online at www.acca.com/MemberCentral/becomemember/.

ACCA
American Corporate Counsel Association
Global Corporate Counsel Association

1025 CONNECTICUT AVENUE, NW, SUITE 200
WASHINGTON, DC 20036-5425
P 202.293.4103
F 202.293.4701
WWW.ACCA.COM
*The in-house bar association*SM

Doing Business Internationally

Updated September 2002

Provides by the American Corporate Counsel Association
1025 Connecticut Avenue, Suite 200
Washington, DC 20036
P 202.293.4103
F 202.293.4701
www.acca.com

The following information is intended to provide in-house counsel with information on conducting business internationally. It should not be construed as legal advice or legal opinion on specific facts, representative of views of ACCA or any of its lawyers, unless so stated. This not a definitive statement on the subject but is intended to be a tool, providing practical information for the reader. Included are sample forms, and resources for additional information. Please help us improve this InfoPAK[SM] by contributing your own sample clauses, forms, policies or other relevant information concerning international development. We hope that you find this material useful. Thank you for contacting the American Corporate Counsel Association.

This information has been produced by Dione S. Randall, Esq.[1] at the direction of the American Corporate Counsel Association

ACCA wishes to acknowledge the following for their contribution to the development of this InfoPAK[SM]:

Richard Mosher, Chair of ACCA's International Legal Affairs Committee & Director and Legal Counsel, Absolute Business, Inc.,

Lex Mundi,

&

West Group, for its generous contribution of research resources

[1] dsrandall_10@yahoo.com. Ms. Randall received her JD from the Jacob D. Fuchsberg, Touro Law Center in Huntington, New York. She also has an MS in TV/Radio Management & Programming from Brooklyn College.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

Table of Contents

I. Introduction **1**

II. How Do I Go Global? **2**

A. Five Basic Steps outlined by the US Department of Commerce

III. Geography, Culture, and Society **6**

A. Geographically locating a lucrative market for your business.
B. Cultural Implications in the Market of Choice

IV. Judicial System **8**

A. Which law prevails?
B. The Initial Process Choice: To Sue or Not to Sue
C. Alternative Methods For Dispute Resolution
    1. Crafting International Arbitration Clauses
    2. Strategies for Multi-Jurisdictional Filings
    3. Virtual Courtroom possibilities

V. Investment Environment **16**

A. Governmental and Political Climate
B. Investment Incentives and Regulations
C. SEC Cross-Border Implications

VI. Structures For Doing Business **19**

A. Selecting the type of company
B. Insurance – Warranties and Indemnities

VII. Requirements For The Establishment of a Business **21**

A. Applicable Laws
B. Visas

VIII. Cessation/Termination of Business **23**

A. Termination
B. Insolvency/Bankruptcy

IX. Additional Resources **24**

X. Sample Forms and Policies **25**

A. Foreign Corrupt Practices Act
B. International Business Transaction Checklist (Lex Mundi)

.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

I. Introduction

A review of the company's assets and liabilities at the last board meeting prompted a discussion on going "Global." You have been assigned the responsibility for assessing your company's growth potential in the various international markets. In essence, this would be the company's first venture into the global market, and they are counting on you to develop the company strategy.

At first blush, this task may seem daunting however, you reassure yourself that the company's profile promises great potential; you get to work. In your initial assessment, you should explore the export potential of your firm. It would prove futile for a company to attempt global expansion without the fundamental resources facilitating such a move. Consulting with experts in the field will aid in narrowing your choices of markets to pursue. Selecting the right market(s) is critical to your company's survival, and should be evaluated with great scrutiny and foresight. Once you have selected a market, you should formulate your export strategy and selling techniques. A more in-depth discussion of how to "Go Global,' is discussed in Section II of this handbook.

When venturing into international borders, it is imperative to consider not only the geographical implications, but also the cultural intricacies of the market. This fundamental premise will determine the life span and remunerative ability of your firm. Sections III and V discuss certain obstacles to avoid when marketing your product to consumers of a different culture.

With the establishment of any new business venture, you want to make sure your legal rights are protected. How do you ensure your agreements are binding overseas? This basic premise does not change simply because you have "crossed the border." Understanding the judicial implications of operating your business in a foreign jurisdiction is equally important. What happens if you encounter a dispute that should be handled by an impartial arbiter? Are there alternative dispute resolutions in place? Which jurisdiction prevails? Answers to these types of questions and more can be found in Section IV, where an illustration of the jurisdictional hierarchy is discussed.

Whether your company has decided to open a new practice, acquire another business or develop an affiliation with an established firm, there are requirements to adhere to. Sections VI and VIII will refresh your memory with the applicable laws for the type of business venture your company embarks on.

The remaining chapter will discuss the downside to the establishment of businesses- Termination and Bankruptcy. Although we have been discussing the initial stages and preparation for a new business venture, it is important to be cognizant of the procedural aspect as it relates to cessation of the business. Procedurally, every good business-minded company is aware of this most difficult aspect of a business. Section VIII will discuss key issues surrounding the termination and insolvency of a business.

A sample form and a checklist have been provided to assist you in the development of your new business.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

II. How To Go Global

Over the past several years, there has been an influx of U.S. companies delving into various markets abroad. The services industry in particular, has served as the impetus for many small-to-medium sized firms to ask the question on "how to go global?" The U.S. Department of Commerce (USDOC) has outlined five basic steps to facilitate the transition of U.S. companies into the global market.[2]

Five basic steps to facilitate the transition into the global market:

- Assess the export potential of the firm.
- If the resources exist, obtain expert counseling.
- Select a market that the company considers "ideal."
- Formulate an export strategy.
- Develop a selling technique for the services offered.

1. Assessing The Export Potential of Your Firm

This is an imperative first step of the transition into international markets. In essence, exporting is an extension of the firm's resources thus it is crucial that a balanced and accurate evaluation be conducted to determine the company's extendibility. Some questions to consider in the assessment are:

- How successful has the firm been in the U.S. market?
- Will the company withstand and adapt to industry trends?
- Will such international ventures have an ill effect on the present operations?

Understanding these types of questions and more, will aid in determining the company's remunerative ability once they have gone global.

2. Obtaining Expert Counseling

This is a pragmatic approach to any new business venture. Investing in sound knowledge is key, and it will aid in pursuing the right course of action for the firm. Purporting to know the intricacies of global investment will only hinder the company's growth potential. Through the

---

[2] See, e.g., United States Department of Commerce – International Trade Administration, How Do I Go Global, www.ita.gov/td/sof/how_do_I_go_global.htm.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

Business Counseling Program, the USDOC[3] assists firms in determining their strengths and weaknesses in a systematic and objective way. The Trade Promotion Coordinating Committee (TPCC) is comprised of nineteen federal agencies that serve American exporting businesses. The Trade Information Center (TIC) is their one-stop source for information regarding exporter-assistance programs. Their toll-free number for assistance is **1-800-USA-TRADE**. TIC will also send, free of charge, their guide ***Export Programs: A Business Directory of U.S. Government Resources.***[4]

The U.S. & Foreign Commercial Service (US&FCS) office of the International Trade Administration (ITA), U.S. Department of Commerce, is another viable source for counseling. The eighty-four nationwide U.S. Export Assistance Centers (EACs) are staffed with specialists who will provide export counseling and assistance. The EAC's are part of a global network and can be located in the Commercial Sections of the U.S. Embassies and Consulates in sixty-nine countries around the world.

The ITA has two additional sources of counseling; the Trade Development (TD) officers and the Market Access and Compliance (MAC) officers. The TD officers are assigned to specific business sectors and provide information on industry analysis, trade policy, and trade promotion issues. The MAC officer, is more country specific, and can provide information on a specific country's overall economy and trade policies, as well as U.S. policies toward that particular country.[5]

The Office of The Chief Counsel for International Commerce (OCC-IC) is another good source to consult prior to investing in the chosen market. The OCC-IC is responsible for legal matters related to the promotion of U.S. trade and investment of domestic firms abroad. They specialize in international agreements, laws, regulations, and commercial practices in foreign countries, providing legal advice to the Under Secretary for the ITA and its various branches including: the U.S. & Foreign Commercial Service, Trade Development, and the Market Access and compliance.[6]

3. Selecting The Right Market

For the firm is another fundamental step in the process of going global. The National Trade Data Bank (NTDB) is a wonderful resource that assists companies in the selection process. The NTDB categorizes its information into basic export information, industry specific information, country specific information, and industry –country information. This information can be accessed at hundreds of Federal Depository Libraries nationwide, or can be purchased in a compact disc-read only memory (CD-ROM) format.[7]

---

[3] See, e.g., Id.

[4] See, e.g., Id.

[5] See, e.g., the International Trade Association (ITA), maintains a website at www.ita.gov.htm

[6] See, e.g., The Office of the Chief Counsel for International Commerce, U.S. Department of Commerce at www.osec.doc.gov/ogc/occic.htm

[7] See, e.g., the NTDB website at www.stat-usa.gov.htm.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

Another useful research guide is the Foreign Trade Index (FTI), also produced by the NTDB. The FTI provides list of foreign firms who have expressed an interest in working with U.S. exporters. For example, the commercial setting in China for U.S. medical device exports has grown over 100% from 1997-2000, and is slated to exceed $275 million in the coming years.[8]

4. Formulate an Export Strategy

This includes identifying and correlating relevant the factors that will determine the best course of method for effective exportation. This step requires good business judgment to develop a sound export venture. Some factors to consider are:

- The firm's export objectives, immediate and long term
- Marketing plans
- Scheduling of activities and deadlines
- Allocation of resources

Depending on the type of business, the marketing plan should cover at least a two-to-five year period, with due consideration for the conditions in the target market, competition, and potential regional expansion.

5. Developing a Selling Technique

Based on the research discussed in the aforementioned steps, enables your company to create their niche in the market of choice. The various selling techniques include, but are certainly not limited to:

- Establishing a branch office in the chosen market
- Electronic commerce as a means of selling the product
- Subcontracting Project consultation
- Affiliation with an established firm

If the firm opts not to have a branch office overseas, the foreign affiliate can provide instant market exposure as well as potential clients.

The NTDB and its Foreign Traders Index is one way to identify foreign affiliates. The firms listed in the index have expressed their interest in working with U.S. firms. The Gold Key Service (GKS) assists U.S. firms in their plans for visiting another country. It combines several services, such as market orientation briefing, market research, introduction to potential affiliates or clients, an interpreter for meetings and assistance in developing a sound market strategy, and an effective follow-up plan. There is a wealth of knowledge and resources within the federal government databank.

---

[8] See, e.g., United States Department of Commerce – International Trade Administration, Medical Device Trade Mission to China (September 2002), www.ita.gov/doctm/cmed2002.htm

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

A quick and accurate assessment of how your services will sell in a given market can be found in the Customized Market Analysis (CMA) report. The custom-tailored market research provides specified information on the market and the foreign representation for the particular service within a given country. The report will discuss the overall marketability of your service, assess price comparisons, and trade barriers, while exploring for possible business partners and trade events.

The International Company Profile (ICP) will certainly aid the firm in developing a profitable selling technique. This customized report can be used in evaluating potential affiliates and clients. Developed by overseas posts, the ICP conducts background information on companies, discusses standing in the local business community, and assesses banking references and overall suitability for the market of choice.[9]

[9] See, e.g. Id.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

III. Geography, Culture, and Society

A. Geographically locating a lucrative market for your business.

Locating a geographically lucrative market for the company takes great research and foresight. Investments in the People's Republic of China (PRC), for instance, have proven to be quite rewarding with respect to certain services. The Chinese mainland's leading commercial city of Shanghai and the traditional offshore territory of Hong Kong, as well as the other regions, are overflowing with potential.[10] Economic and legal reforms have gained a new momentum due to China's recent entry in to the World Trade Organization (WTO).

Although opportunities in different geographical locations may prove to be fruitful, not understanding the society and the culture of its consumers, will otherwise prove futile.

When preparing to do a deal in a foreign jurisdiction, it is imperative to learn as much about the culture, as the company can. A socially graceful act in one country can be an egregious faux pas in another. Do not succumb to the typical American persuasion, that the world is steadily moving in the direction of global "western" culture.

Another essential step in reaching your clientele is to learn the vernacular for that particular region where you intend to develop your business. Effective communication through common language allows for a better working environment and understanding of consumer needs. If there is one thing in general that people of different cultures or persuasions feel deeply about, is that of their religion. Obtaining a basic understanding of the type(s) of religions within a given locality will aid in the success of the company's venture. As illustrated in the aforementioned article, what may seem non-existent and trivial to an average American in the United States, may be the cornerstone to a belief system marked by centuries of cultural practice. In reiteration, it is imperative that the company not underestimates nor disregards the culture of the region selected for global expansion. [11]

Check List For Global Expansion

- o Design the franchise model according to the realities of geographic distance.
- o Adapt your product/service to foreign consumer tastes and needs.
- o Become very familiar with the applicable government regulations.
- o Don't underestimate the importance of knowing the customer region.
- o Consider the necessary technology and how widely available it is.

---

[10] J. Richard Hoel, Jr. "The Cultural practice of Law of How to Successfully Do a Deal in a Foreign Jurisdiction," ACCA Docket Februrary 2001

[11] Stuart de Geus, " A Checklist for Global Expansion," *ACCA Docket* November/December 1997, available on ACCA Online at www.acca.com/protected/pubs/docket/fm01/global.html.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

- Determine real estate space and usage restrictions/limitations.
- Factor in specialized labor costs.
- Learn the vernacular.
- Know the law of the land.
- Negotiating terms of payment may necessitate creativity.
- Ensure proper staffing.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

IV. Judicial System

A. Which Law Prevails?

It is at the outset, in the international arena, somewhat difficult to assess which law will prevail in a dispute. The best answer may depend on how well you understand the unwritten local nuances in a country far from home. The traditional application of American law cannot be imposed in a courtroom in Europe, per se. Although the company is a U.S. company, its foreign practices fall into that of an international jurisdiction. The phenomenon of multi-jurisdictional filings is on the increase, due in part, to record level merger and acquisition activities. Some additional issues prompting disputes arise in the area of competition and enforcement of binding contracts. [12]

The starting point for choice of law questions in America, begin with *Rule 8.5* of the *Model Rules of Professional Conduct*. [13] In summation, if the conduct in question pertains to a matter before a particular tribunal, the rules of the tribunal will be controlling; otherwise, the law of the jurisdiction in which the lawyer is admitted or principally practices will govern, unless the conduct at issue clearly has its "predominant effect" in another jurisdiction where the lawyers is licensed to practice. Facially, the rule seems to resolve any choice of law dealing with multiple jurisdictions. It does not however, contemplate multinational ethical issues. *Rule 8.5 Comment 5,* states that this choice of law provision "is not intended to apply to transnational practice."[14] Instead, "[c]hoice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law."[15]

Despite the paucity of case law addressing this issue, there are a few reported cases that have explored the dilemma surrounding multinational jurisdiction, and may have adopted a common analytical approach. In *Image Technical Services, Inc. v. Eastman Kodak Co.*,[16] the issue involved the "validity of an oral waiver" with regards to a direct conflict of interest obtained by the Hong Kong office of a multinational law firm and it's corporate client in Hong Kong. The defendant in the antitrust case, pending in a California court, moved for the disqualification of the plaintiff's counsel, arguing that the "oral waiver obtained in Hong Kong" was not sufficient here on the mainland. The California Court ruled that the "oral waiver," albeit in Hong Kong, was not sufficient, according to California ethics rules, to excuse counsel for not obtaining the requisite "written consent waiver." Counsel represented Kodak on several other matters, and neglected to properly inform the Hong Kong subsidiary of its intention to participate in a suit adverse to their company.

---

12 For more ideas on external information sources, refer to "Managing Transborder Disputes: Dispatches from the Field", ACCA Docket June 2002. (http://www.acca.com/protected/pubs/docket/so96/international.html).

13 ABA Model Rules of Professional Conduct, Rule 8.5 (b) (2001).

14 Id., cmt. 6 (emphasis added)

15 Id.

16 820 F. Supp. 1212 (N.D. Cal. 1993).

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

Another case involving a class action antitrust lawsuit was brought by fertilizer producers in the United States against several potash producers in Canada. In the *In re Potash Antitrust Litigation,*[17] the issue dealt with whether or not a Canadian lawyer, who was the former General Counsel for one of the Canadian defendants, could act as a consultant for the plaintiffs. Again, this case dealt with a U.S. Court and its application and interpretation of foreign law within U.S. jurisdiction. The Court held that the Canadian rules, and not the American rules applied. The Court reasoned that the lawyer was licensed in Canada to wit; the conduct in question implicated such duties and principles to which the lawyer was bound as a "Canadian" lawyer.

It could very well be argued that American courts should respect the ethical norms of a foreign jurisdiction, especially when the clients and lawyers engage in the activities within that foreign jurisdiction. Some say that the Section on International Law and Practice ("SILP") of the American Bar Association has advocated the sensible approach. SILP has urged the Ethics 2000 Commission of the ABA to change its commentary in *Rule 8.5* to read as follows:

> *The choice of law provision in Rule 8.5 applies to lawyers engaged in transnational practice, unless international law, treaties, or other agreements between competent regulatory authorities in the affected jurisdictions address the issue and provide otherwise.*[18]

SILP has recognized that an exorbitant amount of U.S. businesses have gone global, thus increasing the practice of transnational law. Clearer guidance with respect to the "predominant effect" principle set forth in *Rule 8.5 (b) (2)*, will provide the necessary resolutions to the ever-increasing conflicts surrounding ethical rules on international jurisdictions.

At present the Ethics 2000 Commission is still reviewing the commentary suggestions offered by SILP. [19] Authorities in the international industry suggest that lawyers in such transnational disputes "adhere to the law and disciplinary rules of their licensing jurisdiction, unless those are contrary to the law or ethical rules in the jurisdiction where an action may be pending."[20]

B. The Initial Process Choice: To Sue or Not to Sue

Very few litigators have experience in cross-border litigation, and often rely on their senior outside counsel. Most U.S. lawyers hone their instincts and judgements in a local environment, immersing themselves in the written rules. This approach will not suffice in an international market. To succeed in resolving complex international disputes, counsel should understand and work with, not only the particulars of the relevant legal system, but also the broad array of cultural and behavioral factors of the chosen country.

---

[17] 1993 WL 543013 (D. Minn. 1993).

[18] See Letter of Daniel Magraw, Chair, and Robert Lutz, Chair Elect, of the Section of International Law and Practice to the Members of the Ethics 2000 Commission., dated May 9, 2001, available at www.abanet.org/cpr/mjp-comm_silp.html.

[19] See Center for professional Responsibility, Summary of House of Delegates Action on Report 401 during ABA Meeting in Philadelphia, February 2002, at www.abanet.org/cpr/ethics2k.html.

[20] See J. Villa, Corporate Counsel Guidelines, § 3.02[B] (West Group and ACCA 2001).

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

***Some issues to evaluate in consideration of a suit*:**

- Can you compare completely the risks and benefits of local litigation over arbitration or other process?
- Is facilitated mediation a process recognized or used in either country?
- Are there significant non-monetary expectations in a settlement, such as apologies, revamped business practices, or maintenance of commercial relationships?
- Are there societal norms in either country that provide effective floors and/or ceilings on settlement expectations?
- In arbitration, what is the likelihood of an up or down award as compared to some form of split decision?

It is also important to remember that in different countries and cultures, the expected role, visibility, and depth of counsel involvement in pre-trial negotiations can vary considerably. Again, success greatly depends on understanding and managing the different expectations of the particular country. Americans should remember that business executives in many parts of the world are accustomed to participating in the integral parts of their company, as opposed to the over-delegation of authority to lawyers, in America.

In trans-border situations, where pre-litigation dialogue has not succeeded, several optimal choices can be explored:

- Suit in the United States or in a foreign venue.
- Arbitration under the rules of the American Arbitration Association ("AAA").
- Arbitration under the rules of the International Chamber of Commerce (ICC).[21]
- Privately arranged mediation.

C. Alternative Methods For Dispute Resolution

1. Crafting International Arbitration Clauses

Developing alternative dispute resolutions is another method for ensuring the company's tenure abroad. Crafting International Arbitration Clauses are beneficial and may aid in avoiding costly and time consuming legal battles. Most businesses are constantly operating or negotiating agreements, and it is important to consider whether early resolution overtures are expected and supported in a given country. The company should be familiar with the expected rituals and

[21] See International Chamber of Commerce, International Court of Arbitration, at www.iccbo.org/index_court.asp.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

techniques, ultimately conveying that commencement of such talks will be beneficial to the longevity of the business venture.

This checklist should assist in assessing the advantages of arbitration:

Checklist - Potential Advantages of Arbitration[22]

- **Neutrality -** arbitration can provide a neutral forum when the parties come from different countries, especially those with different legal traditions (for example, common law and civil law jurisdictions).
- **Ensuring expertise in the subject matter of the dispute -** the parties are free to choose their own tribunal with the expertise they require.
- **Ability to set the procedure -** subject to observing any mandatory requirements of the procedural law of the place of arbitration, the parties may agree to their own *ad hoc* rules of procedure to suit their requirements, or adopt a set of institutional rules. The rules may provide for formal or informal hearings or written representation procedures and permit the arbitrator to carry out a site visit or inspect samples.
- **Freedom to choose level of representation -** the parties may represent themselves or be represented by lawyers depending on the complexity of the dispute.
- **Speed -** arbitration can be speedier than litigation because the procedure is much more within the control of the parties. If both parties have the will to settle the dispute quickly, it can be quicker (and thus cheaper).
- **Privacy -** this is important where a party wishes to protect trade secrets, sensitive commercial information or its professional or commercial reputation or to protect itself from competitors or predators (*see "Confidentiality" in the main text*).
- With arbitration, the parties are free to choose a **mutually acceptable place and time** for a hearing.
- **Enforceability -** arbitration has a virtually worldwide mutual enforcement treaty (the New York Convention) for the enforcement of arbitral awards.
- **Cost -** arbitration on the face of it involves additional expense beyond that associated with court proceedings. However, the costs of the entire procedure are capable of being minimized by the sensible use by parties of their power to appoint an arbitrator and by their control of procedure and levels of representation. Arbitration without lawyers can be cheaper than litigation proceedings with them.

---

[22] See Adam Frederickson, “Drafting an Effective Arbitration Agreement” ACCA Docket Home: Products: Global Counsel: Volume III (1998): April: Article

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

2. Multi-Jurisdictional Filings

When dealing with multi-jurisdictional filings, it is essential to develop a core legal team to establish where the business, subsidiaries and assets of the parties to the transaction are located. It is also crucial to liaise closely with local attorneys to tap into their expertise with the local procedure and their contacts with national authority officials. This will be important in identifying the countries in which notification may be required. It is important to assess what may be required in each jurisdiction. One common technique is to create a grid of requirements for the relevant country.

Some issues to consider include:

- Is the notification regime voluntary or mandatory?
- Is there an obligation to suspend transactions pending a decision?
- What are the triggering events/thresholds for notification?
- Who notifies?
- What is the substantive test?
- What are the time limits for a first stage/final decision, and what decisions can be made?
- What are the penalties for breach?

As a general rule, most companies file in countries that have a mandatory regime, to avoid sanctions for failure to notify. Even though notification is voluntary in some jurisdictions, notably Australia, France, Luxembourg, New Zealand, and the UK, it may be vital to notify there if:

- The jurisdiction is the key to the success of the company's merger.
- The regulator is proactive in monitoring merger activity affecting its country, in particular the UK and Australia,
- The regulator has powers to start its own investigation, for example Norway.
- There is a particular competition issue in that jurisdiction.

Checklist: Tips on managing multi-jurisdictional filings[23]

The team

- Establish a central team to co-ordinate the notification process. This may be done in-house or through the appointment of an experienced external law firm. Ensure that

[23] See, Greg Olsen, Jones Day Reavis & Pogue and Neil Lewin, PLC Training, " International Acquisitions: Competition Issues," ACCA Docket 6 no. 1 (2001): 38

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

business people are identified to take ownership of the exercise and to hold responsibility for managing the flow of information.

- Appoint local lawyers, economic experts and/or public relations consultants in the key jurisdictions. Check the individuals' track records.
- In a complex deal, be prepared to devote a vast amount of management time to the process.
- Keep the business team and main deal lawyers abreast of delays or developments as they occur.

The background

- Do a thorough economic analysis taking into account the likely arguments of complainants (such as competitors and customers). Assume that they will present their case formally and informally. Consider in advance what divestments you may be prepared to make without destroying the commercial rationale of the deal.
- Review any earlier filings that you have made with the relevant competition authorities. It is important to both maintain consistency and also to keep an eye on the possibility of future deals when preparing filings.

Jurisdiction

- Identify which countries technically have jurisdiction (mandatory or voluntary) and which will require you to suspend the transaction. Is there a serious competition issue in any country that is commercially important to the deal?
- Do any "foreign transaction" or other exemptions apply, removing the need to notify?
- Evaluate the extent to which non-competition authorities will be involved or influence the antitrust regulators in a given jurisdiction. This will be particularly important in some sectors such as banking and telecommunications.

Filing

- If time is of the essence, consider what can be done after the event in a mandatory regime, which requires filing and/or clearance before completion. What are the penalties for failing to file or for completing before clearance? Is it possible to organize a staged completion so as to delay completion in an affected country until clearance is obtained from the relevant regulator?
- Ensure that your agreement has the relevant pre-closing conditions requiring clearance in key jurisdictions.
- Address the issue of the other parties' involvement in the filing process, and their obligation to co-operate.
- Consider the consequences of a second stage investigation, especially in relation to completion and transfer of assets.
- Check any precedents set in previous cases considered by the authorities and evaluate the risks of adverse reaction.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

- Do you have a particular policy on filing? Some companies choose to file in each country as a matter of course to preserve their reputation.
- Decide whether to make an informal pre-notification approach, and to which authorities. Is it possible to get a comfort letter to avoid the need to file?
- Address the issue of any conditions being imposed or undertakings required by the competition authority. Are there any offers you can make in the early stages to address any particular concerns and avoid a second stage investigation?
- Present the same story in all jurisdictions. There is a marked increase in communication between authorities. This can give rise to important tactical issues particularly where, for example, you are filing in the US and under the EC Merger Regulation. You may not wish all information given to the Merger Task Force to be available to the US Agencies, but on the other hand you will want to be seen to be co-operative.
- Create a basic pro forma package of information and a draft notification document and send it to the local lawyers to be adapted to their requirements. Consider basing the document on Form CO (the Form used for filing under the EC Merger Regulation). This is more stringent and demanding than many national requirements but will ensure that most of the relevant issues are addressed.
- Set a clear timetable and review it as the filings progress.
- Try to avoid filing in holiday periods (usually August in Europe).
- Do not underestimate the amount of time needed to put notifications together and to obtain clearance.

Communications

- Make sure all external communications and press releases are consistent.
- Send briefing papers to the authorities prior to meetings. These should be produced by the central team or approved by it to ensure that all lawyers involved give a consistent message.
- Notes should be kept of all meetings and copied back to the central team.
- Ensure that you deal with any confidentiality issues in relation to business information pre-filing. Consider putting all confidential information in a separate file. [24]

3. Virtual Courtroom Possibilities

As if it's not difficult enough dealing with the cultural norms of a given society, and it's often times obscure legal regimes, technology has catapulted business ventures into resolving legal issues in cyberspace. A number of jurisdictions, both abroad and on the mainland, are moving

[24] See, Adam Frederickson, " A Strategic Approach to Multi-Jurisdictional Filings," Global Counsel 4 no. 10 (1999): 23.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

closer to the notion of the "virtual courtroom." While the U.S. is well under way in their use of the cyber courtroom, foreign counterparts are just beginning to come aboard. It is understandably difficult to assess and predict the landscape of the court system in perhaps Europe however, it is essential to at least have a fundamental understanding of this inevitable legal venue and its impact on the litigation world.

Parties embarking on litigation will most likely have two major concerns: the likely speed and cost of a proceeding. Some jurisdictions are better than others, and have made intrepid strides towards the simplification of their legal system.[25] The virtual litigation system has been used both as a means of managing documents in preparation of a case and its presentation in court.

Some advantages of the Virtual Courtroom include:

- *Document imaging* – whereby documents can be scanned, stored and indexed in electronic form, for easy retrieval.
- *Real-time transcription* – which would allow court proceedings to be transcribed and edited simultaneously, while appearing on screens before judges and lawyers in the course of proceedings.
- *Digital audio recording* – where proceedings are recorded using digital computer technology in place of analogue tape recorders, thus enabling immediate distribution to judge and counsel at the adjournment or close of a proceeding.
- *Video Conferencing* – whereby witnesses abroad in remote locations can be included in the court proceedings. The courts in Singapore, for example, have utilized this technique to question defendants applying for bail.
- *Audio conferencing* – enables parties to hold conferences with the judge, without having to physically be present.

[25] See, www.plcinfo.com "Litigating Across Europe," EC, 1999, IV (3), 41.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

V. Investment Environment

A. Governmental and Political Climate

When assessing which climate to invest in, it is important to ask the primary and simple question of, whether the country generally welcomes investments. In selecting the right environment, the company should look for any governmental or private agencies devoted to the promotion of the company's type of business. It is equally important to consider the political climate in the region where the company plans on expanding. There would be nothing more devastating to a company's investment venture, than a political upheaval resulting from a change in government. These problems can be avoided with proper research and expert consultation.

Some other factors to consider include:

- Must the investor be associated with a national of the country or a related state, (e.g. the EEC), to be permitted to invest?
- Is there a limit to how much a company can invest?
- Are investments protected against nationalization or expropriation?
- Would the federal or provincial system govern such investments?

According to the U.S. Department of Commerce, International Trade Administration,[26] statistics indicate that the U.S. accounts for nearly one-fifth of all global services exports.

B. Investment Incentives and Regulations

In a new business venture, it is always helpful to consider any incentives for investing in a particular market. An important factor to consider is whether the country has a high-cost effective workforce, and a growing domestic demand for increasingly sophisticated products and services offered by U.S. companies. This type of market can be found in perhaps, the People's Republic of China (PRC), where decades of their politically imposed isolation from the U.S. and other Western economies, have left them amenable to foreign investment.

In China, the mainland's incentive for foreign investors were originally concentrated in several special economic zones (SEZ's), established near Hong Kong, Taiwan, and Macao. In the 1990's, the rest of the mainland followed suit, thereby catapulting Taiwan into Asia's leading recipient for foreign investment. Advising the company about establishing a presence in, for instance, Shanghai, requires an understanding of its attractions and difficulties, the types of entities available, and the privileges available in the various locations. Shanghai has emerged

---

[26] See U.S. Department of Commerce, International Trade Administration, Office of Services Industry July 2001 at www.ita.doc.gov./td/sif/exporting_services_overseas.htm.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

as the mainland's leading center for manufacturing, shipping, trade, real estate, technology, consumerism, and domestic capital markets.[27]

While incentives may entice investments in a particular country and region, restrictions do apply with respect to the establishment of foreign presence. For instance, Shanghai permits a "Representative Office" (RO) and a subsidiary known as a "Foreign Investment Enterprise, (FIE) to operate in its jurisdiction. PRC law has considered allowing foreign companies to establish a branch; however, this type of entity has not come to the fore. An RO allows the company to establish a presence without investing capital. This is usually done when a company wants to prepare for future investments and operations. An FIE hires mainland personnel directly, to broaden its mainland activities, thereby enjoying limited liability. The FIE may be a wholly foreign-owned enterprise (WFOE, also referred to as WOFE) or a Sino-foreign joint venture enterprise (JV).[28] Recent WTO-related reforms have broadened the activities of the FIE however, restrictions exist on foreign ownership in various markets.

C. SEC Cross-Border Implications

The SEC has retained the principle that even in foreign transactions, U.S. investors must have certain basic statutory protections. The cross-border rules, which were harmonized with the SEC's new Mergers and Acquisitions rules, became effective on January 24, 2000.[29] In the Cross-Border rules, the SEC also provided guidance on how participants in cross border transactions might utilize the Internet in communicating with security holders without falling afoul of the U.S. Securities laws. The SEC's rule making initiative developed from three important trends:

1. U.S. investors increasing ownership of foreign companies' securities.
2. The increasing number of foreign companies with securities listed on the US exchanges.
3. The explosive increase in cross-border activities including, mergers and acquisitions fuelled by industry consolidation, deregulation of markets, the transparency created by the Euro, the abundance of private equity funds and the overall globalization of business.

The new rules were intended to encourage bidders and issuers to give U.S. shareholders the opportunity to participate in their market. The new rules provide as follows:[30]

---

[27] Xiaoyong (Shawn) Li and Neal A. Stender, "Investing in China: Changing Roles of Shanghai and Hong Kong," ACCA Docket 20, no6 (2002): 58-72.

[28] For procedures governing establishment and activities of an RO, see the detailed rules of the Ministry of Foreign Trade and Economic Cooperation on the approval and control of foreign representative offices in English translation at www.sfisc.com.

[29] See, SEC Release no. 33-7759 and 34-42054; International Series Release no. 1208, 22nd October 1999. Full texts are available at www.sec.gov/currentsecrulemaking/33-7759.htm.

[30] Matthew D. Bloch, Weil , Gotshal & Manges, "SEC Cross Border Rule Changes," Global Counsel 5, no1 (2000) 70.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

Tender offers for securities of a foreign private issuer will be exempt from the procedural and disclosure requirements of the Exchange Act (and therefore need only be made in compliance with any applicable foreign regulatory or stock exchange requirements) when US security holders hold 10% or less of the non-US securities that are subject to the offer (Tier I exemption).

- Tender offers for securities of a foreign private issuer will be exempt from certain Exchange Act rules that often conflict with foreign rules and practices when US security holders hold more than 10% but not more than 40% of the class of securities sought in the offer (Tier II exemption). Tier II codifies the SEC's current positions.
- Tender offers for the securities of a Tier I target company will be exempt from new Rule 14e-5 (former Rule 10b-13) of the Exchange Act, which prohibits a bidder and related parties from purchasing securities otherwise than pursuant to the tender offer. This exemption will allow certain purchases to be made outside the tender offer even in the US.
- Equity securities issued in a rights offering by a foreign private issuer will be exempt from Securities Act registration when US security holders hold 10% or less of the subject class of securities (*Rule 801*).
- Debt or equity securities issued in an exchange offer for a foreign private issuer's securities, or in a business combination involving a foreign private issuer, will be exempt from Securities Act registration when US security holders hold 10% or less of the subject class of securities (*Rule 802*). In the case of debt securities, the exemption will also apply to the qualification requirements of the Trust Indenture Act of 1939 (such as, for example, use of a qualified indenture trustee and SEC registration of the underlying indenture).

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

VI. Structures For Doing Business

A. Selecting the type of company

As discussed above, governmental participation in the intricacies of a business venture is often seen in the global market. This may shape the company's decision on the type of entity the business, will pursue in a foreign jurisdiction. As discussed in Section V, the government in the PRC plays a major role in the establishment of foreign presence in their country.

The six main types of entities include:

- Joint Ventures
- Limited Liability Companies
- Liability Companies, Unlimited
- Partnerships, General or Limited
- Partnerships Undisclosed
- Sole Proprietorships

Some questions to consider when assessing the entity of choice:

- Are such entities permitted in the jurisdiction?
- If so, what is the registration or incorporation procedure?
- How long does the procedure take?
- Must the national of a particular country or related state, be a participant, manager, or director?
- What is the investor's potential liability?
- Are there restrictions on capitalization?
- Do any tax consequences exist?

B. Insurance– Warranties and Indemnities

Global businesses are increasingly turning to the Warranty and Indemnity (W & I) market to ensure their deals are successful. W & I insurance is often times seen as a panacea. However, unless the desires of both parties have been fleshed out into a cohesive written agreement, insurance policy would have failed its intended purpose.

The main players in the insurance market include the Broker or Underwriting Agency (UA). A Broker acts on behalf of the insured party and the UA acts on behalf of the insurers. In the UK, for instance, a Broker will approach the insurance market to negotiate the best solution for the

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

client, which includes the price, insurance coverage, and structure of the transaction. By contrast, the UA would provide a single quote on behalf of a consortium of insurers. In the UK, insurance is available for both domestic and cross-border deals.

The Insurance policy should be relatively short, consisting of six or seven pages of essential information on the liabilities to be insured. For example:

- The names of the insured party, the target party and the names to the sale agreement.
- The warranties and indemnities to be insured.
- The limit of liability.
- The excess and premium.
- The period of insurance.
- The names of the insurers.
- The name of the loss payee, which is the party to whom the insured may require payments to be made. For example, where the seller is the insured party, the buyer can be named as the loss payee.

The process of insuring warranties and indemnities falls into several distinct stages:[31]

- The broker or underwriting agency will collect information about the transaction.
- The broker will obtain quotations from insurers and select the most competitive one for the client. Where an underwriting agency is used it will provide a quotation.
- The insurer or underwriting agency will appoint lawyers to carry out a limited due diligence exercise and to review the warranties and indemnities and the disclosure letter. The due diligence exercise consists of a review of the due diligence reports commissioned by the buyer, where available. The review of the transaction documents is needed to determine whether the warranties and indemnities have been fully negotiated. Where the seller's liabilities are being insured, there is a risk that warranties and indemnities will be less closely negotiated than in a non-insured sale.
- The parties to the insurance policy and the sale and purchase agreement, their lawyers and the insurance broker will negotiate the terms of the insurance policy and ensure that it marries with the sale and purchase agreement.
- The insurance policy will be signed and the premium paid.

On a cross border transaction, insurers should select an international firm of lawyers with capabilities in a number of jurisdictions. Advice may be needed from lawyers in more than one country jurisdiction.

---

[31] See Kirsten Birkett, “Warranty and Indemnity Insurance in a Global Context,” Global Counsel, 6, no. 7 (2001): 43.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

VII. Requirements For The Establishment of a Business

A. Applicable Laws

Although a great emphasis has been placed on understanding the cultural nuances of a particular country, it is equally important to become acquainted with and adhere to the applicable laws therein. Some questions to consider in the establishment of the business abroad, include:

- Is the business subject to any alien business laws?
- Are there registration or reporting requirements?
- Are there anti-trust issues both internationally and domestically that the company should be aware of?
- What are the filing requirements?
- Are there environmental regulations that may preclude or suspend the business venture?
- Are licenses and/or permits required for the anticipated activity?
- Must the enterprise carry insurance?

B. Visas

A company's ability to move executives around the world and to recruit key personnel within a limited timeframe can be an important factor in its continued success.

Tips on ensuring the application runs smoothly

- Consult with a specialist (immigration lawyer), unless you are familiar with the jurisdiction concerned or the application is not urgent.
- Make sure that you are applying for the correct permit or visa. In most countries, it is acceptable to call the processing authority and ask for guidance on forms and procedures (not France). Consider whether a training or work experience scheme would be more appropriate.
- Be sure to check on how long it will take to process an application and make sure you allow more than the stated time if at all possible. If the application is urgent, explain this (and the reasons for the urgency) in a letter. Some countries will prioritize applications if certain criteria are met (consult with their instructions).
- Ensure that you fill in all the sections of the application form and give full and complete information.
- Make sure all the correct supporting documents are filed with the main application. If the authority has to request missing documents, this could significantly delay the application.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

- Enclose a cover letter with the application explaining the kind of permit or visa you are applying for, thereby allowing for early intervention if a mistake occurs.
- Draft and agree to the terms of the employment contract as soon as possible. Often, this is required to accompany the work permit application.
- Ensure that the applications are correctly coordinated. Certain jurisdictions require both the employer and the employee to make separate applications.
- Establish early on whether any family members will be accompanying the employee. Their details can often be included in the employee's application. This will speed up the process for them to accompany him/her.
- Consider whether the worker already has a valid work permit from another EEA country? If so, he may be able to move to the other EEA country without the need for a second work permit.
- If the permit is refused, some authorities will set out the reasons for the refusal. Carefully review this information to establish whether the applicant's position has been correctly understood. If not, consider asking for guidance by way of a formal appeal (if available) or on an informal basis.
- Make sure the application is typed and submit photographs taken by a professional photographer.[32]

[32] See "Sending Executives To Work Abroad," EU Counsel On-line Supplement to Cynthia A. Binns, "An Overview of Temporary U.S. Business Visas, ACCA Docket Feature, July/August1999

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

VIII. Cessation or Termination of Business

A. Termination

There are a myriad of reasons why companies may terminate their business practices in a foreign jurisdiction. Perhaps the venture lacked remunerative qualities due to some unforeseen issues. However, the procedural aspects involved in the establishment of a business also apply to the winding-down of a venture. The following are a number of steps to follow to ensure proper termination of the business.

- Does the jurisdiction impose a tax penalty for terminating a business?
- What are the costs involved in such a termination?
- How long does the process take?
- Can the business be terminated without the government's approval or intervention?
- What obligations, if any, exist to creditors, employees, and others?

B. Insolvency/Bankruptcy

Bankruptcy is another stage of the termination phase, whereby companies can no longer proceed in their business capacity. The bursting of the ".com" bubble, the US economic slowdown as a result of the events surrounding September 11, 2001, and a lack of confidence in Corporate USA have all played a part in the rise and fall of American businesses. In the U.S., Chapters 7, 11, and 13 govern the processes surrounding bankruptcy issues. In the international arena however, these issues are case specific and country determinative.

Some factors to consider when deciding to file for bankruptcy are:

- What is the extent of investor liability?
- What choices are available to investors, with regard to the restructuring of the business?
- What implications might the foreign subsidiary bankruptcy have on the U.S. parent company?

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

IX. Additional Resources

ACCA Docket

Xiaoyong (Shawn) Li and Neal A. Stender, *Investing in China: Changing Roles of Shanghai and Hong Kong* ACCA Docket ,June 2002
http://www.acca.com/protected/pubs/docket/jj02/china1.php

J. Richard Hoel, Jr., *The Cultural Practice Of Law Or How To Successfully Do a Deal in a Foreign Jurisdiction,* ACCA Docket February 2001
http://www.acca.com/protected/pubs/docket/fm01/cultural.html

Brian C. Olson and Scott E. Squillace, *Establishing a Company Presence Around the World*, ACCA Docket, February 2001, http://www.acca.com/protected/pubs/docket/fm01/establish.html

Frank A. Orban III, *Legal Globalization: The Challenges for In-House Counsel*, ACCA Docket February 2001 http://www.acca.com/protected/pubs/docket/fm01/global.html

Simon G. Zinger, *Regulation of Electronic Commerce in Europe: A Corporate Counsel Guide,* ACCA Docket, May 2001 "httpwww.acca.com/protected/pubs/docket/mj01/regulate1.php

Billie Munro Audia, Philipp Tamussino and David W. Hull, *Recent Developments in European Competition Law: Vertical and Horizontal Agreements*, ACCA Docket, July/August 2001 ttp://www.acca.com/protected/pubs/docket/ja01/eucompete1.php

Michael Roster, J. Daniel Fitz, Peter J. Turner, & M. Elizabeth Wall, *Adding Value Around the Globe*, ACCA Docket, November/December 2001
http://www.acca.com/protected/pubs/docket/nd01/add1.php

Delbert E. Winn, *International Distributorship Agreements: Don't Belittle the Boilerplate,* ACCA Docket, February 2000 http://www.acca.com/protected/pubs/docket/jf00/distributorship.html

InfoPAKS℠

Global Law Department, http://www.acca.com/infopaks/global.html

Alternative Dispute Resolution, http://www.acca.com/infopaks/adrcont.html

Articles

Frida P. Glucoft and Lorna A. De Bono, *Globalization of The Workforce U.S. Immigration Law,* http://www.acca.com/protected/legres/immigration/globalization.html

New Laws Affect the Transfer Of Information Across the Atlantic, ***http://www.acca.com/protected/legres/employment/eudata_transfer.pdf***

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

X. Sample Forms & Policies

Statement of Company Policy on Compliance with the Foreign Corrupt Practices Act

Introduction

It has been and continues to be company policy to conduct operations and activities outside the United States in complete compliance with the letter and spirit of the Foreign Corrupt Practices Act (FCPA). No company officer, employee, or agent has authority to offer payments to a foreign official to induce that official to affect any government act or decision in a manner that will assist the company or any of its subsidiaries or divisions to obtain or retain business. Furthermore, every officer, employee, and agent is obligated by company policy and federal law to keep books, records, and accounts that accurately and fairly reflects all transactions and disposition of company assets.

The consequences of failing to comply with these policies are potentially disastrous for the company and its employees. Violation of the FCPA by a company employee can result in millions of dollars in fines against the company and can subject that employee to prosecution, criminal fines, and imprisonment. In addition, the company will take all necessary disciplinary action -- including dismissal -- against employees violating these policies.

The Statutory Framework

The FCPA generally prohibits payments that are corruptly made to induce a foreign official to use his or her influence to affect a government act or decision in a manner that will assist a company or any of its subsidiaries or divisions to obtain or retain business. The FCPA also requires issuers of registered U.S. securities to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets" of the issuer. These provisions have been construed to require a parent company's subsidiaries likewise to maintain accurate books and records of all transactions, whether or not the subsidiaries are themselves U.S. entities.

The FCPA prohibits payments to foreign officials that are made or offered corruptly. Corrupt payments for purposes of the act are payments intended to induce a foreign official to misuse his or her official position or to fail to perform an official function. Payments include gifts of substantial value, lavish entertainment, and loans. The prohibited payment could be made to obtain or retain business for the company and/or its subsidiaries. It could also be made to obtain legislation, regulations, or rulings to benefit the company's business.

The corrupt payment must be made to a foreign official. A foreign official for purposes of the FCPA is an officer or employee of a foreign government or department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government, department, agency, or instrumentality. Officers of state owned and operated

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

enterprises generally would be regarded as within the purview of the FCPA. The term foreign official also includes political party officials and candidates for political office.

Certain types of payments are not covered by the FCPA. This does not mean, however, that the payment will be immune from prosecution under other U.S. laws. For example, although the FCPA does not apply to payments previously described that are made to U.S. citizens or entities, or to foreign nationals who are not foreign officials, other U.S. or foreign laws may prohibit such payments. Furthermore, such payments violate company policy. The company also prohibits employees from using their personal funds to provide payments to foreign officials.

Payments to attorneys, consultants, advisors, suppliers, and customers of the company violate the FCPA if made while knowing that all or a portion of such payments will be offered, given, or promised to foreign official for any of the prohibited purposes stated above. A person's state of mind is knowing when that person is aware or has a firm belief that a prohibited transaction is substantially certain to occur. Thus, mere negligence or foolishness is insufficient to form a basis for liability. Liability cannot be avoided, however, by willful disregard or deliberate ignorance of the facts. Large fees paid to a foreign consultant for efforts to persuade foreign government officials to take actions favorable to the company's future business operations are likely to raise questions where it is common knowledge that officials of that government typically expect payments before taking favorable action, even if the fees are mutually understood to be for the exclusive benefit of the consultant or agent.

There is an exclusion from coverage under the FCPA for so-called grease or facilitating payments, which are payments to expedite or secure the performance of routine government actions. Such actions include obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pickup and delivery; loading and unloading cargo; and actions of a similar nature.

Penalties for Violations

Congress significantly increased the criminal penalties for FCPA violations in 1988. A violation of either the anti-bribery or accounting provisions could subject individuals to fines of the greater of $250,000 or twice the gross gain or loss from the offense and imprisonment for up to five years. The company may be fined up to $2 million or twice the gross gain or loss from the offense.

Problem Areas under the FCPA: Employing Consultants

There are two basic steps the company will take to reduce the likelihood of a prohibited payment by a consultant to an official of a foreign government with which the company is transacting business and to minimize the risk that such a payment will be deemed to have been knowing on the part of the company or its employees if it does occur.

The company will ascertain background information on the consultant to assess the potential for violation.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

The company will, in a written agreement for the provision of the desired services, secure representations and warranties with respect to the consultant's intended disposition of the fees he or she is to receive. Fee payment will be conditioned on the receipt of certification by the consultant that those representations and warranties are true and correct as of the date of such payment. Certification forms will be provided to employees when needed and by the corporate compliance officer must approved all consultant agreements prior to their execution.

Materials may not be reproduced without the express consent of ACCA. Copyright © 2002 by the American Corporate Counsel Association

Selected as an ACCA Coursework Resource 2001 Annual

International Business Transactions Checklist

http://www.lexmundi.org/committees/intl-tax-checklist.pdf

developed by:

LEX MUNDI

THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

International Tax Practice Group

www.lexmundi.org

INTERNATIONAL BUSINESS TRANSACTIONS CHECKLIST

EDITOR:

Leonard Schneidman, Partner,
Foley Hoag - Boston, Massachusetts
Chair, Lex Mundi International Tax Practice Group

TABLE OF CONTENTS

I. Geography And Culture
II. Investment Environment
III. Investment Incentives
IV. Financial Facilities
V. Exchange Controls
VI. Import/Export Regulations
VII. Structures For Doing Business
VIII. Requirements For The Establishment Of Business
IX. Operation Of The Business
X. Cessation Or Termination Of Business
XI. Labor Legislation, Relations And Supply
XII. Tax On Corporations And Other Entities
XIII. Tax On Individuals
XIV. Tax On Other Legal Bodies
XV. General Tax Considerations
XVI. Immigration Requirements
XVII. Expatriate Employees

© COPYRIGHT LEX MUNDI, LTD. 2001

I. GEOGRAPHY, CULTURE AND SOCIETY

1. Culture

- Are there cultural influences or prohibitions on the way business is conducted?

2. Geography

- What are the neighboring countries?

3. Judicial System

- What is the type of judicial system?
- Is the judicial system generally perceived to be impartial?
- Must disputes be resolved in the country?
- Is there a political method of resolving disputes?
- Are alternative methods of dispute resolution permitted?
- How long does it take to resolve disputes?
- Can foreign judicial decisions be enforced in the country?
- Can decisions from the country be enforced outside the country?
- Are there separate tribunals depending upon the subject matter of the case?
- Are there different legal systems within the country or its political subdivisions?
- Can the investor choose to be subject to the country's jurisdiction or not?

4. Languages

- What languages are spoken?

5. Public Services/Communications

- What is the state of the public services (e.g. water, electricity, gas, etc.)?
- What is the state of the communications system?
- What is the state of the country's infrastructure (e.g. roads, railways etc.)?

6. Religion

- Are there religious influences or prohibitions on the way business is conducted?

II. INVESTMENT ENVIRONMENT

1. Demography

- What locals are available to an investor (e.g. industrial zones, duty free zones)? (see also Section III, no. 3 and 4)
- What are the size of the different markets?
- What other types of businesses are being conducted in the country?

2. Diplomatic Relations

- Are there established diplomatic relations with the country?
- What embassies or consulates are in the country?
- Are there prohibitions or restrictions on certain business dealings with the country?
- Are there any travel restrictions to or within the country?

© COPYRIGHT LEX MUNDI, LTD. 2001

3. Environmental Considerations

- What is the attitude and state of environmental regulation?

4. Government

- Are elections scheduled or is there an anticipated change in the present government?
- Has the government been historically stable?
- What is the administrative decision making process like in the country?

5. Investment Climate

- Does the country generally welcome investment?
- Are investments protected against nationalization or expropriation?
- Are there governmental or private agencies devoted to the promotion of investment?
- What is the rate of inflation?

6. Investment Regulations

- Are foreign investments restricted or prohibited (e.g. depending on the sector of the economy)?
- Must the investor be in association with a national of the country or a related state, (e.g. the EEC) to be permitted to invest?
- Is the investor limited in the amount of his investment?

7. Political System/Climate

- What is the present political system?
- What type of political system has existed in the past?
- Has the political system been historically stable?
- Is there a federal system?
- If so, what are the principle areas of federal versus provincial jurisdiction?
- Is the country socially stable?

8. Treaties

- Are there any treaties relevant to the anticipated investment?

III. INVESTMENT INCENTIVES

1. Export Incentives and Guarantees

- Are there tax incentives for exports?
- If so, are they limited to certain types of products?
- Is export financing available from government or private sources?
- If so, what forms of financing or guarantees are available?
- Is there any governmental insurance for exports?
- Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?

2. Grants, Subsidies and Availability of Funds

- Can the investor receive grants or subsidies?

© COPYRIGHT LEX MUNDI, LTD. 2001

- Are grants and subsidies restricted by the type of activity?
- What is the process for obtaining approval for these grants or subsidies?
- How long does it take to receive approval?
- Can the investor receive loans from the government or governmental agencies?
- Must a national be a participant in the enterprise in order for the investor to receive these grants or subsidies?

3. National Tax Incentives

- Are there national tax incentives for the investor (whether in the country of investment or from the investors' own country)?
- Are the incentives restricted by the type of activity?
- Are the incentives restricted by the duration of the activity?
- Does the investor need to receive approval to be eligible for these incentives?
- If so, what is the process of application?
- How long does such approval take?
- Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?

4. Regional Tax Incentives

- Are there tax incentives for the investor that exist only in certain regions of the country?
- Does the investor need to receive approval to be eligible for these incentives?
- Are the incentives restricted by the type of activity?
- Are the incentives restricted by the duration of the activity?
- What is the process of application?
- How long does such approval take?
- Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?

IV. FINANCIAL FACILITIES

1. Banking/Financial Facilities

- What kind of financial institutions exist?
- Must the investor maintain a bank account in the country?
- What are the requirements for opening a bank account?
- What are the restrictions, if any, on the investor's use of the account?
- What is the type of financial system in the country?
- How is the banking system structured?
- Is there a stock market?
- Can the investor receive bank loans?

V. EXCHANGE CONTROLS

1. Business Transactions with Nationals, Residents or Non-Residents

- How are nationals, residents and non-residents defined?

© COPYRIGHT LEX MUNDI, LTD. 2001

- Are there restrictions on conducting business with nationals, residents or non-residents?
- Are there reporting requirements?
- Can the investor receive loans from nationals, residents or non-residents?

2. Investment Controls

- Are there restrictions on direct investment in the country?
- Are there restrictions on indirect investments in the country? Must the investor make declarations regarding the nature of his investment?

3. Money Transfer

- Is there free determination of exchange rates?
- Are there restrictions on the transfer of money into or out of the country?
- Are there restrictions on the remittance of profits abroad?
- Are there reporting requirements?
- Can hard currency be taken out of the country?

VI. IMPORT/EXPORT REGULATIONS

1. Customs Regulations

- Is the country a member of GATT?
- Is the country a member of the EEC?
- Is the country a party to a regional free trade agreement?
- Does the Customs Department value the goods?
- How are goods cleared through customs?
- Are there applicable tariffs?

2. Exports

- Are there restrictions on exports?
- Are export licenses required?
- Are there applicable export duties?

3. Foreign Trade Regulations

- Are there foreign trade regulations on the import or export of goods involved in the business?

4. Imports

- Are import licenses required?
- Are there applicable import duties?
- Are there applicable import quotas?
- Are there applicable import barriers?

5. Manufacturing Requirements

- Must the product contain ingredients or components which are found or produced only in the country?
- Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?

© COPYRIGHT LEX MUNDI, LTD. 2001

6. Product Labeling

- Are there applicable labeling or packaging requirements (e.g. multi-lingual notices, safety warnings, listing of ingredients, etc.)?

VII. STRUCTURES FOR DOING BUSINESS

1. Governmental Participation

- Will the government seek to participate in the ownership or operation of the entity (e.g. depending on the type of activity involved)?
- If so, to what extent?
- What is the investor's potential liability to partners, investors or others?
- Are there restrictions on capitalization?
- What are the investor's tax consequences? (see also Sections XII and XIII)

2. Joint Ventures

- Are joint ventures permitted?
- If so, what is the registration or incorporation procedure?
- How long do these procedures take?
- What costs and fees are involved?
- Must a national of the country or a related state, (e.g. the EEC) be a participant, manager or director?
- What is the investor's potential liability?
- Are there restrictions on capitalization?
- What are the investor's tax consequences?

3. Limited Liability Companies

- Are limited liability companies permitted?
- If so, how are they registered or incorporated?
- How long do these procedures take?
- What costs and fees are involved?
- Must a national of the country or a related state be a participant, manager or director?
- Are there restrictions on capitalization?
- What are the investor's tax consequences?

4. Liability Companies, Unlimited

- What are the forms of liability companies?
- How are these companies registered or incorporated?
- How long do these procedures take?
- What costs and fees are involved?
- Must a national of the country be a participant, manager or director?

5. Partnerships, General or Limited

- Are partnerships recognized or permitted?
- Must a national of the country or related state be a partner?
- If so, to what extent?

© COPYRIGHT LEX MUNDI, LTD. 2001

- What costs and fees are involved?
- What is the investor's potential liability?
- What are the investor's tax consequences?

6. Partnerships, Undisclosed

- Do undisclosed partnerships exist?
- If so, how are they formed?
- What costs and fees are involved?
- Must a national of the country or a related state be a participant, manager or director?
- What is the investor's potential liability?
- What are the investor's tax consequences?

7. Sole Proprietorships

- Can the investor be a sole proprietor?
- How is the sole proprietorship registered or established?
- How long does this process take?
- What costs and fees are involved?
- What is the investor's potential liability?
- Are there restrictions on capitalization?
- What are the investor's tax consequences?

8. Subsidiaries/Branches/Representative Offices

- Can the investor establish a branch, subsidiary or representative office?
- If so, how long does registration or incorporation take?
- What costs and fees are involved?
- What is the investor's potential liability?
- Must a national of the country be a participant, manager or director?
- Are there restrictions on capitalization?
- What are the investor's tax consequences?
- Are these tax consequences different than those of a local company?

9. Trusts and Other Fiduciary Entities

- Are trusts or other fiduciary entities recognized?
- If so, how are each defined?
- What are the legal consequences of a transfer of assets to a trust or fiduciary?
- Can the investor be the grantor, trustee or beneficiary?

VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

1. Alien Business Law

- Is the business subject to any alien business law?
- Are there registration or reporting requirements?

2. Antitrust Laws

- Do the entity's operations comply with anti-trust laws?
- Are there filing requirements?

© COPYRIGHT LEX MUNDI, LTD. 2001

3. **Environmental Regulations**
   - Is the business of the investor subject to environmental regulation? If so, are there added costs involved (e.g. audit requirements)?

4. **Government Approvals**
   - Are government approvals required for the anticipated business?
   - If so, how long does this process take?
   - What fees are involved?

5. **Insurance**
   - Must the enterprise carry insurance?
   - If so, what kind of risks must be insured?
   - Is there a state monopoly on insurance?

6. **Licenses/Permits**
   - Are licenses or permits required for the anticipated activity?
   - If so, how does the investor apply for and receive the necessary license or permit?
   - How long does it take to receive the license or permit?

IX. OPERATION OF THE BUSINESS

1. **Advertising**
   - Are there restrictions on advertising?

2. **Attorneys**
   - Is it necessary to have local counsel?
   - How can local counsel be found?
   - How much are attorneys fees?

3. **Bookkeeping Requirements**
   - Must the investor keep local books of accounts?
   - In what form must the investor keep accounts (e.g. GAP, in what language, etc.)?

4. **Business Ethics/Codes**
   - Are there certain business ethics or codes which the investor must follow (e.g. GAAP for accountants, etc.)?

5. **Consumer Protection Laws**
   - Are there consumer protection laws which apply to the investor's operations?

6. **Construction**
   - What are the costs of construction?
   - Are permits required for construction?
   - How is authorization to construct obtained?
   - How long does it take to receive authorization?
   - What fees are involved?

© COPYRIGHT LEX MUNDI, LTD. 2001

7. Contracts
- Can the investor freely enter into local contracts?
- Can the contracts be governed by the law of another country?

8. Price Controls
- Are there applicable price controls?

9. Product Registration
- Must the entity register its product?
- If so, how is registration obtained?
- How long does the process take?
- Are there fees involved?

10. Reduction or Return on Capital
- Can capital be repatriated while the corporation is still ongoing?

11. Sale of Goods
- Are there restrictions on the manner, time or place of sale of goods?

12. Trade Associations
- Are there trade associations the investor can or must join?
- If so, are there fees involved?
- Are there mandatory trade practices?

X. CESSATION OR TERMINATION OF BUSINESS

1. Termination
- What are the tax consequences of terminating the business?
- What costs are involved in termination?
- How long does it take to terminate the business?
- How is the investor's particular form of business treated in
- termination?
- Can the business be terminated without government approval or intervention?
- What are the obligations toward creditors, employees and others upon termination?
- What are the tax consequences of termination?

2. Insolvency/Bankruptcy
- What is the extent of the investor's liability in the event of insolvency or bankruptcy?
- What choices, if any, are available to the investor with regard to the restructuring of the business?

XI. LABOR LEGISLATION, RELATION, AND SUPPLY

© COPYRIGHT LEX MUNDI, LTD. 2001

1. Employer/Employee Relations
- What laws govern employer/employee relations?
- Are there obligations to train employees?

2. Employment Regulations
- Must the investor hire nationals of the country?
- Is there a minimum wage?
- Is there a maximum number of hours an employee can work each week?
- Is there a minimum number of vacation and sick days to be given?

3. Hiring and Firing Requirements
- Must the investor employ a minimum number of people?
- Must the investor employ a minimum number of nationals?
- Must certain positions in the company be held by nationals?
- Are there rules to follow in hiring/dismissing personnel (e.g. notice)?
- Does the investor have an continuing obligation towards dismissed employees?

4. Labor Availability
- Is adequate skilled or unskilled labor available for the anticipated business?

5. Labor Permits
- Are labor permits required?
- If so, how are they obtained?
- How long does the process take?
- What fees are involved?

6. Safety Standards
- Are there safety codes which must be followed?

7. Unions
- Are unions recognized?
- What are the unions in the investor's business?
- What are these unions' political affiliations, if any?
- Is there an obligation on the part of the employer to organize unions?
- Are there mandatory collective bargaining agreements for the business involved?

XII. TAX ON CORPORATIONS

1. Allowances
- What are the major allowances (e.g. capital cost depreciation)?
- What are the major deductible items?
- What are the major expenses that are excluded from deductibility?

2. Calculation of Taxes
- How is the taxable base determined?

© COPYRIGHT LEX MUNDI, LTD. 2001

3. Capital Gains
- What are the federal or national tax rates on capital gains?
- What are the regional or state taxes on capital gains?
- What are the municipal or local taxes on capital gains?

4. Filing and Payment Requirements
- When must the corporation file its tax return, if any?
- When must the corporation pay its taxes?
- Are taxes paid in installments or annually?

5. Miscellaneous Taxes Due
- Is there a tax on capital?
- Is there a business license tax?
- Is there an apprenticeship tax?
- Is there a training tax?
- Are there other taxes?
- What are the filing and payment requirements?

6. Registration Duties
- Are there registration duties due upon the incorporation of a company?
- Are there registration duties due upon an increase in capital?
- Are there registration duties due upon the transfer of the company's shares?
- Are there registration duties due upon a transfer of corporate assets?
- Are there any other registration duties due?

7. Sales Tax or Other Turnover Tax
- What is the system of sales tax (e.g. V.A.T., cumulative)?
- Is input tax creditable against output tax?
- What are the tax rates?
- What are the filing and payment requirements?

8. Social Security and Welfare System Contributions
- Are social security contributions due?
- Are retirement or pension contributions due?
- Are unemployment insurance contributions due?
- What are the filing and payment requirements for any such contribution?

9. Special Tax Schemes
- Are there particular tax consequences of doing business in the country?

10. Tax on Profits
- What are the federal or national income tax rates on profits?
- What are the regional or state tax rates on profits?
- What are the municipal or local tax rates on profits?

11. Tax Treaties
- Are there any applicable tax treaties?
- Are there any rules against treaty-shopping?

© COPYRIGHT LEX MUNDI, LTD. 2001

12. **Territoriality Rules**
    - Where is the corporation subject to tax?
    - Is the corporation subject to tax on its worldwide income?

13. **Treatment of Tax Losses**
    - How are corporate tax losses treated?

14. **Wealth Tax**
    - Is there an applicable wealth tax?

15. **Withholding Taxes**
    - What are the rates of withholding tax on dividends?
    - What are the rates of withholding tax on royalties?
    - What are the rates of withholding tax on interest?
    - What are the rates of withholding tax on profits realized by a foreign corporation?

XIII. TAX ON INDIVIDUALS

1. **Allowances**
    - What are the major allowances?

2. **Calculation of Taxes**
    - How is the taxable base determined?

3. **Capital Gains Tax**
    - Are capital gains taxable?

4. **Filing and Payment Requirements**
    - When must the individual file a tax return, if any?
    - When must the individual pay his taxes?

5. **Inheritance and Gift Tax**
    - Does the individuals' presence in the country subject him to inheritance or gift tax?
    - What kind of assets are subject to tax?
    - What are the tax rates?
    - Are allowances available?
    - What are the payment and filing requirements?

6. **Miscellaneous Taxes Due**
    - What are the miscellaneous taxes to which the individual may be subject?
    - What are the filing and payment requirements?

7. **Real Estate/Habitation Tax**
    - Is the individual subject to real estate or habitation tax?

8. **Sales Tax**
    - Does the individual pay sales tax?

© COPYRIGHT LEX MUNDI, LTD. 2001

9. Social Security and Welfare System Contributions
- Are contributions to social security due?
- Are contributions to the welfare system due?
- If so, what are the payment and filing requirements?

10. Stock Option, Profit Sharing and Savings Plans
- Is there taxation of stock option plans?
- Is there taxation of profit sharing plans?
- Is there taxation of savings plans?

11. Taxation of Benefits In Kind
- What is the rate of taxation on benefits in kind (e.g. automobile, housing and utilities, education, etc.)?

12. Taxes on Dividends
- Are dividends taxable regardless of their form?

13. Tax on Income
- What are the federal or national tax rates on income for residents?
- What are the federal or national tax rates on income for non-residents?
- What are the regional or state tax rates on income for residents?
- What are the regional or state tax rates on income for non-residents?
- What are the municipal or local tax rates on income for residents?
- What are the municipal or local tax rates on income for non-residents?

14. Tax Treaties
- Are there any applicable tax treaties?
- Are there any rules against treaty-shopping?

15. Territoriality Rules
- Where is the individual subject to tax?
- Is the individual subject to tax on his worldwide income?

16. Wealth Tax
- Is the individual subject to tax based upon his wealth?
- If so, what are the rates?
- Are there any allowances available?
- What are the payment and filing requirements?

17. Withholding Tax
- Is salary subject to a withholding tax at the source?
- What is the treatment of residents as compared to non- residents?

XIV. TAX ON OTHER LEGAL BODIES

1. Allowances
- What are the major allowances (e.g. capital cost depreciation)?

© COPYRIGHT LEX MUNDI, LTD. 2001

- What are the major deductible items?
- What are the major expenses that are excluded from deductibility?

2. Calculation of Taxes

- How is the taxable base determined?

3. Capital Gains

- What are the federal or national tax rates on capital gains?
- What are the regional or state taxes on capital gains?
- What are the municipal or local taxes on capital gains?

4. Filing and Payment Requirements

- When must the entity file a tax return, if any?
- When must the entity pay its taxes?
- Are taxes paid in installments or annually?

5. Miscellaneous Taxes

- Due Are other taxes due?
- What are the filing and payment requirements?

6. Registration Duties

- Are there registration duties or fees due upon the setting up of the legal body?
- Are there registration duties or fees due upon a change in the capital of the legal body?
- Are there registration duties due upon the transfer of capital?
- Are there registration duties due upon a transfer of assets?
- Are there any other registration duties due?

7. Sales Tax or Other Turnover Tax

- Is the legal body subject to sales tax or any other turnover tax (e.g. VAT., cumulative)?
- Is input tax creditable against output tax?
- What are the tax rates?
- What are the filing and payment requirements?

8. Social Security and Welfare System Contributions

- Are social security contributions due?
- Are retirement or pension contributions due?
- Are unemployment insurance contributions due?
- What are the filing and payment requirements for any such contribution?

9. Special Tax Themes

- Are there particular tax consequences of doing business in the country under the form of the particular legal body?

10. Tax on Profits

- What are the federal or national income tax rates on profits?
- What are the regional or state tax rates on profits?
- What are the municipal or local tax rates on profits?

© COPYRIGHT LEX MUNDI, LTD. 2001

11. Tax Treaties
- Are there any applicable tax treaties?
- Are there any rules against treaty-shopping?

12. Territoriality Rules
- Where is the legal body subject to tax?
- Is the legal body subject to tax on its worldwide income?

13. Treatment of Tax Losses
- How are tax losses treated?

14. Wealth Tax
- Is there an applicable wealth tax?

15. Withholding Taxes
- What are the rates of withholding tax on the legal body's activities?

XV. GENERAL TAX CONSIDERATIONS

1. Taxes Generally
- Is there a generally accepted way of structuring the company or other entity so as to insure the desired tax consequences?
- Is there an advance tax ruling that can be used to validate or invalidate the chosen form of doing business?
- Is there a general anti tax avoidance system?
- Can the chosen form of business be treated as a deferent form for tax purposes?

XVI. IMMIGRATION REQUIREMENTS

1. Immigration Controls
- Are there immigration quotas?
- Are vaccinations required?
- Are medical certificates required?
- Are entry permits required?
- If so, must you apply for an entry permit before entering the country?
- Are exit permits required?
- Are re-entry permits required?

2. Immigration Requirements/Formalities
- Is a residence permit required?
- If so, does the investor have to apply for one before entering the country?
- What information must be supplied to the immigration authorities?
- How long does it take to receive authorization?

3. Visas
- Is a visa required for travel or stay in the country?

© COPYRIGHT LEX MUNDI, LTD. 2001

- If so, for how long is the visa valid?
- How does the investor apply for a visa?
- What documents are required?
- How long does it take to receive a visa?
- What fees are involved?

XVII. EXPATRIATE EMPLOYEES

1. Cost of Living and Immigration

- How does the cost of living compare to that in the investor's home country?
- What is the rate of inflation?

2. Drivers' Licenses

- Must the investor obtain a driver's license for that country?
- How does the investor obtain a driver's license?
- What fees are involved?
- Is an examination, either practical or written, required?

3. Education

- What type of schools are available for the investor's family?
- What fees are involved?
- What is required for enrollment?
- Can the investor or company receive a tax benefit?

4. Housing

- What type of housing is available for the investor?
- Can the investor own property?
- Must the investor have housing before he enters the country?
- Can the investor subsidize housing and receive a tax benefit?

5. Importing Personal Possessions

- How can the investor import his personal belongings?
- Are import duties payable?
- Are there requirements for clearing the belongings through customs?

6. Medical Care

- What level of medical care is available?
- Is there national health care?

7. Moving Costs

- What costs are involved in moving?
- Can the investor receive any tax allowances?

8. Tax Liability

- What is the expatriate's tax liability? (see also Section XIII)
- What are the allowances?
- Are there any applicable tax treaties?

© COPYRIGHT LEX MUNDI, LTD. 2001

9. Work Contracts

- Does the investor need a work contract to work in the country?
- If so, does the contract have to be for a certain duration, for the performance of a specific job or for a specific position?
- Does the contract have to be with a national or resident of the country or related state?

10. Work Permits

- Does the investor need a work permit to work in the country?
- How and where does the investor apply for the permit?
- What documents are required?
- What fees are involved?
- How long does it take to receive the permit?
- For how long is the permit valid?

© COPYRIGHT LEX MUNDI, LTD. 2001